IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Benjamin P. Fields,	)	
	)	C.A. No. 3:17-cv-00443-MBS-TER
Plaintiff,	)	
	)	
vs.	)	
	)	
Richland County Sheriff Department, Richland School District Two, and Leon Lott,	)	**DEFENDANT RICHLAND SCHOOL DISTRICT TWO'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS**
	)	
Defendants.	)	
	)	

Defendant Richland School District Two ("Defendant School District") respectfully submits this reply memorandum pursuant to Local Rule 7.07 in support of Defendant School District's Motion to Dismiss.

I. ARGUMENTS

A. Plaintiff's Distinction Of Malice As It Applies to the SCTCA Is Unsupported by South Carolina Law

Plaintiff contends that because the South Carolina Tort Claims Act ("SCTCA") does not specifically identify constitutional malice as an exception to the waiver of immunity, to presume so is misguided. Plaintiff's attempt to create this distinction under the SCTCA, however, is misplaced and unsupported by established South Carolina law. Although the South Carolina Supreme Court has noted that " [a]ctual malice under the *New York Times* standard should not be confused with the concept of common law malice as an evil intent or a motive arising from spite or ill will," courts in South Carolina [have held] that the "SCTCA clearly excludes a governmental entity's liability for an individual's loss stemming from a state employee's conduct that constitutes actual malice and when doing so, [have relied] on the constitutional definition of 'actual malice.'" *See Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 666 (S.C.2006) (*quoting Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 510 (1991)); *Gause v. Doe*, 451 S.E.2d 408 (S.C. Ct. App. 1994); *Seaton v. City of North Charleston*, 2012 WL 6186158 *3, 5 (D.S.C. Dec. 12, 2012).

Specifically, in *Gause*, when citing S.C. Code Ann. § 15–78–60(17), the South Carolina Court of Appeals' reference to "actual malice" was clearly to the constitutional standard rather than to any common law standard. 451 S.E.2d at 409 (citing *New York Times Co.*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686). In at least two other cases, courts in South Carolina have applied the constitutional "actual malice" standard when addressing immunity under the SCTCA. *Thompson v. Univ. of S.C.*, No. 04–219, 2006 WL 2583595, at *15 & n. 6 (D.S.C. Sept.5, 2006) (private figure plaintiff); Sa*nders v. Prince*, 304 S.C. 236, 403 S.E.2d 640, 643 (S.C.1991) (public figure plaintiff). In contrast, there is no clear, established authority to support Plaintiff's position, and therefore, Plaintiff's claim against the District should be dismissed.

B. Plaintiff's Alleged Association With The District Is Relevant To The Grounds For Dismissal, And The District Owed No Duty To Plaintiff As A Matter Of Law

Based on the plain language of the Complaint, Plaintiff alleges that he was "employed by Defendant School District as a conditioning teacher and football coach." (Compl.¶ 11.) When considering this allegation in the light most favorable to Plaintiff and accepting it as true for the purposes of this motion only[1], Plaintiff would be considered an at-will employee, and it cannot be disputed that the rationale in *Gause* is relevant and applicable to the District's grounds for

[1] It is the Defendant District's position that Plaintiff is a former deputy who was assigned to serve as a School Resource Officer at Spring Valley High School ("SVHS") and who volunteered as a Strength and Football Coach at that school. Plaintiff received an annual stipend from the School District and was eligible to contribute to the South Carolina Retirement System. (Compl. ¶ 11)

dismissal of Plaintiff's gross negligence claim. Further, there are no allegations contained in the Complaint to support that Plaintiff had anything but an "at-will" association, albeit as an employee or volunteer who received an annual stipend, with Defendant School District. Therefore, because an employer owes no duty to an at-will employee (or a paid volunteer) with respect to "employment" actions taken against him or her, Plaintiff's negligence claim against Defendant School District should be dismissed. Any alleged inadequate investigations, false assumptions, or failures to re-evaluate on the part of the RCSD or School District is not relevant and does not constitute a claim upon relief can be granted. *See Gause*, 317 S.C. at 42 (stating that at-will employees can "be terminated at any time, for any reason, or for no reason at all, irrespective of any inadequate investigations, false assumptions, or failures to reevaluate on the part of the employer"). For these reasons, Plaintiff's negligence claim must fail.

Plaintiff contends that because his negligence claim is not limited to any employment actions taken against him directly, his at-will employment status is not a bar to the claim. Specifically, in the Complaint, Plaintiff contends the School District owed him a legal duty, particularly a duty to investigate and a duty to report to the public. Such duty, however, does not exist toward Plaintiff as a matter of law. *See Parsons v. Smith*, et al., 2015 WL 4755608 (S.C. Ct. App. 2015) (holding employer hospital had no duty to investigate employee's allegations of mistreatment by her supervision); *Anthony v. The Atlantic Group, Inc.*, 909 F. Supp. 2d 455, 473-475 (D.S.C. 2012) (holding employer had no duty to conduct a more thorough investigation as to its employees due to the at-will nature of the employment relationship such that it was immaterial whether the investigation was based on inaccurate data or whether Plaintiff was given an opportunity to clear up any misunderstandings.) Further, to the extent Plaintiff alleges Defendant School District owed such duty to the public at large, he has no standing to bring this action, and the facts alleged in the Complaint do not support such a claim. Accordingly, Plaintiff's negligence claim should be dismissed as a matter of law.

C. Amendment Of Plaintiff's Claim Would Be Futile

To the extent Plaintiff seeks leave to amend the Complaint, such request should be denied. Although leave to amend should be "freely give[n] when justice so requires," Fed.R.Civ.P. 15(a)(2), a district court has discretion to deny a motion to amend a complaint, so long as it does not outright refuse "to grant the leave without any justifying reason." *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). A district court may deny a motion to amend when the amendment would be prejudicial to the opposing party, the moving party has acted in bad faith, or the amendment would be futile. *See Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir.2006) (en banc). In this case, amendment of the Complaint would be futile for the reasons stated in this memorandum of law as well as Defendant School District's initial memorandum of law. Pursuant to *Gause* and the South Carolina Tort Claims Act, Plaintiffs claims against the School District fail as a matter of law, and no additional allegations can change that fact. Also, Plaintiff simply cannot in good faith allege any additional facts to support a defamation claim against Mr. Long, Mr. Webb, or any other School District employee in his or her individual capacity. Further, Plaintiff cannot in good faith allege any additional facts to support any negligence or other recognizable cause of action against Defendant School District resulting from Plaintiff's termination or conduct displayed during the altercation with the female student at issue or from the School District's response to the incident. For this reason, any request for leave to amend the Complaint should be denied, and Defendant School District reserves the right to supplement this response as appropriate in the future should Plaintiff be granted leave to file a motion to amend the Complaint.

II. CONCLUSION

For the above-stated reasons, and those stated in the School District Defendant’s initial memorandum, Defendant School District respectfully request that the Court grant its motion to dismiss Plaintiff's claims against Defendant School District and deny Plaintiff’s request to amend the Complaint.

Respectfully submitted,

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Columbia, South Carolina